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JAROM ANGKUT SDN BHD v. KETUA PENGARAH JABATAN PENGANGKUTAN JALAN MALAYSIA & ORS

HIGH COURT MALAYA, SHAH ALAM
ALICE LOKE YEE CHING JC
[ORIGINATING SUMMONS NO: BA-24NCVC-161-02-2021]
B 9 NOVEMBER 2021

Abstract – *The applicant, whose vehicle's registration number had been wrongly transferred to the third respondent by the Road Transport Department (JPJ), was right in suing the first and other respondents for declaratory reliefs by way of an originating summons instead of by judicial review. Whilst the order sought (inter alia directing the Pengarah to reverse and return the registration number) may be of the nature of mandamus, the actual relief sought was ownership of the registration number; it was essentially a private action which does not require a public law remedy.*

CIVIL PROCEDURE: *Originating summons – Application for – Application for declaration and order that registration number of vehicle be reversed and returned to applicant – Ownership of registration number of vehicle claimed against party implicated in fraud – Whether fraud in transfer of registration number of vehicle established – Whether private action – Whether reversal of registration number of vehicle in arena of public law and judicial review proceedings – Whether declarations and orders sought ought to be allowed – Road Transport Act 1987, s. 11(3) & (5)*

The applicant, a locally incorporated company, owned a Honda motorcycle bearing registration number D11 which was registered in the name of the applicant. However, when the applicant's representative attempted to renew the road tax of the motorcycle, the transaction was rejected. The applicant was informed that the registration number D11 in their system belonged to another vehicle. As a consequence, the applicant was unable to renew the road tax for its motorcycle. On the advice of the first respondent, the applicant made a police report pertaining to the discovery that the registration number D11 for its motorcycle had been transferred to another party. A notice was issued pursuant to the provisions of s. 114(1) of the Road Transport Act 1987 ('RTA') to the applicant to be present at the office of the first respondent to assist in the investigation to look into the complaint of the applicant that registration number D11 had been transferred to Mubin Shah Activities. Subsequently, the first respondent wrote a letter to the applicant regarding the status of the investigation. Relying on the last paragraph of the letter in which the first respondent advised for a court order to be applied

for in order for the registration number D11 to be reversed and returned to the applicant's vehicle, the applicant filed the present proceedings. The applicant also cited MyEG Services Bhd as the second respondent as the gateway provider of the system responsible for registration of ownership of vehicles. The third respondent, the sole proprietor of Mubin Shah Activities, implicated in the wrongdoing which led to its vehicle using registration number D11, was also made a party. The applicant sought the following reliefs, *inter alia* (i) a declaration that registration number D11 belonged to the motorcycle owned by the applicant; (ii) a declaration that the transfer of ownership of D11 presented by the third respondent was null and void; (iii) an order that registration number D11 be returned to the motorcycle of the applicant; and (iv) an order that the first respondent and second respondent take all necessary actions to give effect to the above-said orders including registering D11 to the applicant's motorcycle. Whilst the first respondent admitted that there was non-compliance and fraud involved in the transfer of registration, the first respondent chose to oppose the application by taking the position that the originating summons filed by the applicant was not the proper mode; the applicant ought to have instead taken judicial review proceedings. The issue that arose for determination was whether the applicant had applied the correct mode in seeking its legal remedy in court.

Held (allowing order in terms of prayers as sought for in originating summons):

(1) The substantive issue here was the ownership of registration number D11 that was being claimed against the third respondent. The third respondent was the party implicated in the fraud, and whose vehicle now had the number D11. There were no allegations made against the first or the second respondent. The applicant had not challenged nor questioned any actions of the first respondent. In fact, the applicant had acted on the advice given by the first respondent to apply for a court order. The reliefs were substantially against the third respondent. He was the substantive respondent as the party to be affected by the declarations sought as it would result in the registration number D11 in his vehicle being reversed. In view of the specific term of the declaration sought against the third respondent, there was no public law element involved. (paras 22-24)

(2) Section 11(3) and (5) of the RTA vests the power of registration on the Director. However, in the event of a dispute as to ownership, the Director, after due inquiry, has the power to decide on the person to be registered as the owner. This does not detract from the remedy claimant may seek in court, as provided under sub-s. (5). And, where the court decides, the Director shall amend the register to reflect the order made by the court. This provision clearly allows a party claiming ownership

to seek redress from the court against another party. A private action is envisaged under this provision and, the determination of the court shall be given effect to by the Director amending its register accordingly. The submission for the first respondent that a reversal of registration was in the arena of public law and judicial review proceedings must be resorted to was therefore misconceived. (paras 25-28)

(3) The third respondent was not present to contest the orders materially affecting its rights, notwithstanding having been served with the cause papers. He was not interested to defend the action. The evidence adduced by the first and second respondents themselves established fraud in the transfer of vehicle bearing registration number D11. This wrong ought to be set aside by allowing the declarations and orders sought. (para 29)

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC ***(refd)***

Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor [2007] 3 CLJ 377 CA ***(refd)***

Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia [2009] 1 CLJ 192 CA ***(refd)***

Legislation referred to:

Road Transport Act 1987, ss. 11(3), (5), 114(1)

For the appellant - Hee Hooi Chun; M/s Ghazi & Lim
For the 1st respondent - Ashraf Abd Hamid; Jabatan Peguam Negara
For the 2nd respondent - Norhazira Abu Haiyan & Siti Nabila Tahir; M/s Hafarizam Wan & Aisha Mubarak

Reported by Suhainah Wahiduddin

JUDGMENT

Alice Loke Yee Ching JC:

Background Facts

[1] The facts giving rise to the filing of this originating summons by the applicant are not in dispute.

[2] The applicant is a locally incorporated company. It owned a Honda motorcycle model NBC110MD, with engine number JA28E-2006014, chassis number PMKJA2830EB006024, and bearing registration number D11. The motorcycle had been registered in the name of the applicant since 7 July 2014.

[3] However, on 13 February 2018 when the applicant's representative presented himself at the branch office of the first respondent in Banting to renew the road tax of the motorcycle, the transaction was rejected. The

applicant was informed that the registration number D11 in their system belonged to another vehicle. As a consequence of rejected transaction, the applicant was unable to renew the road tax for its motorcycle.

[4] On the advice of the first respondent, the applicant made a police report at the Balai Polis Sri Muda on 13 February 2018 pertaining to the discovery that the registration number D11 for its motorcycle had been transferred to another party.

[5] A notice dated 19 February 2018 issued pursuant to the provisions of s. 114(1) of the Road Transport Act 1987 was then sent to the applicant to be present at the office of the first respondent in Putrajaya on or before 5 March 2018 to assist in the investigation of the matter. The notice stated that the investigation was to look into the complaint of applicant that registration number D11 had been transferred to Mubin Shah Activities on 24 October 2017. Mr Tan Siew Lai, a director of the applicant attended the inquiry on 5 March 2018.

[6] On 11 August 2020, the applicant through its solicitors, Messrs Ghazi & Lim, wrote to the first respondent to enquire on the status of the investigation. The first respondent replied on 15 December 2020. As the contents of the letter are material, the relevant portions are reproduced in full as follows:

> Ghazi & Lim
> Peguambela & Peguamcara
> 19th Floor, Plaza MWE,
> No. 8, Lebuh Farquhar,
> 10200 Penang, Malaysia.
>
> Tuan,
>
> **Pertukaran Hak Milikan Kenderaan Nombor Pendaftaran D11**
>
> Adalah dengan hormatnya saya merujuk perkara di atas dan surat tuan Bil. Tuan: JPJ/BI … 600-3/2/1 (10) bertarikh 11 Ogos adalah berkaitan.
>
> 2. Untuk makluman pihak tuan, berdasarkan hasil temusiasat wakil syarikat Jarom Angkut Sdn. Bhd. (pemunya asal kenderaan nombor pendaftaran D11) En. Tan Siew Lai pada 7.3.2018 dan pemunya baru serta pihak lain yang terlibat didapati kenderaan motorsikal dengan nombor pendaftaran D11 telah dibuat pertukaran hak milikan tanpa kebenaran pemunya asal.
>
> 3. Siasatan awal mendapati terdapat ketidakpatuhan dan penipuan urusan Sistem Tukar Hak Milik Sementara (STMS) melalui MyEG (gateway provider) yang berlaku pada tarikh 24.10.2017 di Syarikat Mubin Activities Sdn Bhd (Used Car Dealer). Susulan itu, pihak MyEG telah membekukan akaun STMS syarikat Mubin Activities Sdn Bhd pada pada 21.1.2018 dan menyekat pertukaran hak milikan kenderaan nombor pendaftaran D11 mulai 21.2.2018. Pihak MyEG turut membuat laporan polis terhadap syarikat Mubin Activities Sdn Bhd pada 14.1.2019 atas ketidakpatuhan dan penipuan urusan STMS.

A 4. Hasil pertemuan wakil syarikat Jarom Angkut Sdn Bhd pada Februari 2019 di Ibu Pejabat JPJ, Jabatan ini telah memaklumkan bahawa kes ini telah berlaku di Used Car Dealer tersebut melalui urusniaga STMS MyEG. Wakil syarikat tersebut telah disyorkan untuk memfailkan kes ini bagi mendapatkan perintah mahkamah supaya pengembalian nombor pendaftaran D11 dapat dilakukan. Pada 16 Jun 2020, Jabatan ini telah
B menghubungi wakil syarikat Jarom Angkut Sdn Bhd untuk mendapatkan status perintah mahkamah dan dimaklumkan bahawa pihak syarikat akan mengadakan perbincangan dalaman untuk mendapatkan persetujuan semua Ahli Lembaga Pengarah bagi mendapatkan perintah mahkamah. Sehingga kini, Jabatan ini masih belum menerima perintah mahkamah berkenaan pertukaran hak milikan kenderaan nombor pendaftaran D11.
C
… t.t …
Pengarah
Bahagian Pelesenan Kenderaan
b.p. Ketua Pengarah
Jabatan Pengangkutan Jalan
D Malaysia

[7] Relying on the last paragraph of the letter in which the first respondent advised for a court order to be applied for in order that registration number D11 be reversed and returned to the applicant's vehicle, the applicant filed the present proceedings.

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[8] Apart from the first respondent, the applicant has also cited MyEG Services Bhd as the second respondent as the gateway provider of the system responsible for registration of ownership of vehicles. The third respondent is also made a party. He is the sole proprietor of Mubin Shah Activities, implicated in the wrongdoing which led to its vehicle using registration
F number D11.

Reliefs Sought In The Originating Summons

[9] The applicant seeks the following reliefs:

G (i) a declaration that the applicant is the owner of a Honda motorcycle model NBC110MD, with engine number JA28E-2006014, chassis number PMKJA2830EB006024, and bearing registration number D11;

(ii) a declaration that registration number D11 belongs to the motorcycle owned by the applicant;

H (iii) a declaration that the transfer of ownership of D11 presented by the third respondent is null and void;

(iv) an order that ownership of motorcycle bearing registration number D11 be returned to the applicant;

I (v) an order that registration number D11 be returned to the motorcycle of the applicant; and

(vi) an order that the first respondent and second respondent take all necessary actions to give effect to the above-said orders including registering D11 to the applicant's motorcycle.

[10] Only the first and second respondents are present in these proceedings. Although the third respondent had been duly-served with the cause papers, he did not appear to contest the application.

The Contention By The First Respondent

[11] The first respondent confirms the factual scenario presented by the applicant. The records of the Road Transport Department showed that from 7 July 2014 until 24 October 2017, the applicant was the owner of a Honda motorcycle model NBC110MD, with engine number JA28E-2006014, chassis number PMKJA2830EB006024, and bearing registration number D11. However, there was a transfer of registration on 24 October 2017 to Mubin Shah Activities through the second respondent's system.

[12] The investigation conducted by the first respondent on receiving the applicant's complaint showed that registration number D11 had been transferred to the new owner without the consent of the applicant. The first respondent advised the applicant to apply for a court order for a reversal of the registration.

[13] However, whilst the first respondent admitted that there was non-compliance and fraud involved in the transfer of registration, as averred in the affidavit in reply, the first respondent has chosen to oppose the application by taking the position that the originating summons filed is not the proper mode. Instead, the applicant ought to have taken judicial review proceedings.

[14] The reasons for the said contention are these. The applicant is seeking a reversal of the ownership and the motorcycle registration number. The powers pertaining to reversals are statutory powers to be exercised by the first respondent, as provided for in the Road Transport Act 1987 ("Act 333"). A person who is aggrieved by the decision or omission of the first respondent ought to challenge it by judicial review proceedings. Further, the order directing the first respondent to reverse the registration number is an order in the nature of *mandamus*, which is a public law remedy.

[15] The first respondent had, in an earlier application filed as encl. 14, applied to strike out the originating summons filed on the same ground ie, that the wrong mode had been resorted to for the prayers sought against the first respondent. In respect of encl. 14, I had, on 23 August 2021, dismissed the application.

A **Contention Of The Second Respondent**

[16] The second respondent in its affidavit in reply explained the entire process in which the registration number D11 came to be transferred to the vehicle belonging to the third respondent. It also conducted its own investigation, whereupon the third respondent was found to have effected the B transfer fraudulently by not obtaining the consent of the applicant when submitting the requisite documents. Upon the discovery of the fraud, it took steps to freeze the account opened by the third respondent on 24 January 2018. A police report was also lodged by its representatives on 14 January 2019.

C **Analysis And Decision Of This Court**

[17] The fact that there was wrongdoing that led to the applicant losing the registration number D11 belonging to its motorcycle according to the records of the first respondent, is not disputed. This is also evident from the advice D of the first respondent in the letter dated 15 December 2020 that a court order is required to remedy the wrong.

[18] The only issue for the determination of this court is whether the applicant had applied the correct mode in seeking its legal remedy in court.

[19] The authorities are replete on this point, and I need only to refer to E the leading authority of *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145 and the rationale stated therein for subjecting challenges to decisions of public authorities to judicial review proceedings. Expounding on the stringent conditions of leave and observation of time-frame in filing judicial review proceedings, the F Federal Court held:

> [16] One may ask what is the purpose of these conditions? The basic objective is to protect those entrusted with the enforcement of public duties 'against groundless, unmeritorious or tardy harassment that were accorded to statutory tribunals or decision making public authorities by G O. 53, and which might have resulted in the summary, and would in any event have resulted in the speedy disposition of the application, is among the matters fit to be taken into consideration by the judge in deciding whether to exercise his discretion by refusing to grant a declaration …' as described in the celebrated case of *O'Reilly v. Mackman* [1982] 3 All ER 1124 at p 1133. Further, there is also the need to reduce the delay in H resolving such application in the interest of good administration. As Lord Diplock in *O'Reilly v. Mackman* reiterated, 'The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the person affected by I the decision'.

> [17] Set against the conditions laid down above against the facts of this instant case, one will notice that the appellant is handicapped by limitation of time (among other things) in bringing an application under O. 53 r. 3(6) of the RHC for judicial review.

(See also: *Dato' Seri Anwar Ibrahim v. Perdana Menteri Malaysia & Anor* [2007] 3 CLJ 377; [2007] 4 MLJ 422; *Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [2009] 1 CLJ 192; [2009] 1 MLJ 676).

[20] The critical determination is whether the subject matter of the suit has a sufficient public law element to compel the applicant to commence its action by way of judicial review. In this regard, the Federal Court had this to say:

> [62] We observed that a challenge on the use of appropriate procedure is very much fact-based. Thus, it is necessary for a judge when deciding on such matter to first ascertain whether there is a public law element in the dispute. If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of O. 53 of the RHC. If it is a mixture of public and private law then the court must ascertain which of the two is more predominant. If it has substantial public law element then the procedure under O. 53 of the RHC must be adopted. Otherwise it may be set aside on ground that it abuses the court's process. But if the matter is under private law though concerning a public authority, the mode to commence such action under O. 53 of the RHC is not suitable.

[21] Notwithstanding the prayers which appear numerous at first blush, the relief is essentially a declaration that registration number D11 belongs to the motorcycle of the applicant and that the first and second respondents are to take all steps necessary to give effect to the declaration sought.

[22] The substantive issue here is the ownership of registration number D11 that is being claimed against the third respondent. The third respondent is the party implicated in the fraud, and whose vehicle now has the number D11. There are no allegations made against the first or the second respondent. The applicant has not challenged nor questioned any actions of the first respondent. In fact, the applicant acted on the advice given by the first respondent to apply for a court order.

[23] The reliefs are substantially against the third respondent. He is the substantive respondent as the party to be affected by the declaration sought as it will result in the registration number D11 in his vehicle being reversed.

[24] In view of the specific term of the declaration sought against the third respondent, it is my view that there is no public law element involved, within the meaning expounded in *Ahmad Jefri*'s case (*supra*).

[25] The first respondent submitted that the powers of registration are statutory powers and within his sole province, as provided for in s. 11(3) and (5) of Act 333. The relevant provisions are set out as follows:

Registration numbers

11(1) Upon the registration of a motor vehicle, the Director shall:

(a) assign to the motor vehicle the prescribed index mark indicating the registration area in which the vehicle is registered or the status of the owner of the motor vehicle and a separate number (in this Act such mark and number are referred to collectively as – the registration number), and such registration number shall continue to be the registration number of such motor vehicle until it is broken up, destroyed or sent permanently out of Malaysia, and such registration number shall not be assigned to any other motor vehicle:

Provided always that a person who is registered as the owner of a motor vehicle may, subject to any terms and conditions which may be prescribed, and on payment of the prescribed fee, have the number assigned to such motor vehicle assigned to another motor vehicle of which he applies to be registered as owner and which has not previously been registered, and the Director shall thereupon assign a new registration number to the first mentioned motor vehicle and make all necessary and consequential amendments to the register and registration certificate;

(b) register the person by whom the application for registration was made as the owner of the motor vehicle; and

(c) issue to that person a registration certificate in the prescribed form.

(2) …

(3) Where two or more persons have or claim possession and use of a motor vehicle, the Director shall register as the owner of the motor vehicle:

(a) such one of those persons as may be nominated by them in the prescribed manner for the purpose of such registration; or

(b) in the event of any dispute between those persons, such one of them as may be selected for the purpose by the Director, after such inquiry as he may consider necessary.

(4) In any case referred to in paragraph (3)(a), the Director may also enter in the register and in the registration certificate the names of the other claimants to the ownership of the motor vehicle, but no such entry of the name of any claimant shall be deemed to affect any liability which the person registered as owner may incur under this Act, or to vest in such claimant any of the rights or powers conferred by this Act on the registered owner of a motor vehicle.

(5) The decision of the Director under paragraph (3)(b) shall be final and conclusive for the purposes of this Act, but shall not be deemed to prejudice or to affect in any way the right of any other claimant to the ownership of the motor vehicle to cause his rights to be determined by a court, and the Director shall amend the register in accordance with any final order made by such court.

[26] The provision vests the power of registration on the Director. However, in the event of a dispute as to ownership, the Director, after due inquiry, has the power to decide on the person to be registered as the owner. This does not detract from the remedy claimant may seek in court, as provided under sub-s. (5). And, where the court decides, the Director shall amend the register to reflect the order made by the court.

[27] This provision clearly allows a party claiming ownership to seek redress from the court against another party. A private action is envisaged under this provision and, the determination of the court shall be given effect to by the Director amending its register accordingly.

[28] The submission of counsel for the first respondent that a reversal of registration is in the arena of public law and judicial review proceedings must be resorted to is therefore misconceived.

Conclusion

[29] The third respondent is not present to contest the orders materially affecting its rights, notwithstanding having been served with the cause papers. I thereby conclude he is not interested to defend the action. The evidence adduced by the first and second respondents themselves establish fraud in the transfer of vehicle bearing registration number D11. This wrong ought to be set right by allowing the declaration and other orders sought.

[30] For the foregoing reasons, I allow order in terms of prayers (i) to (vi) as sought for in the originating summons. I make no order as to costs.